

United States v. Andrade

Defendant's Reply to Government's Sentencing Memorandum

ATTACHMENT-5

CAUSE NO. 10-61027-3

BIOGREEN INTERNATIONAL, INC.

VS.

BENITO A. GARZA, JR.

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IN THE COUNTY COURT

AT LAW NUMBER 3

NUECES COUNTY, TEXAS

PLAINTIFF'S FIRST ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Now come Plaintiff, Biogreen International, Inc., in the above-styled and numbered cause, and hereby makes and files this, its First Original Petition and in support thereof would respectfully show unto the Court the following:

I.

DISCOVERY CONTROL PLAN LEVEL

Plaintiff intends to conduct discovery under Level 2 of the Texas Rules of Civil Procedure 190.

II.

PARTIES AND SERVICE

Plaintiff, Biogreen International, Inc., is a Texas Corporation conducting business in Nueces County, Texas. Defendant is an individual who is a resident of Texas and conducted the transactions which are the basis of this lawsuit in Nueces County, Texas. Defendant may be served with process at his place of employment at the following address: 400 S. Padre Island Drive, Suite 203, Corpus Christi, Texas 78405, or at 6317 Sir Jack Street, Corpus Christi, Texas 78414. Service of said Defendant as described above can be effected by personal delivery.

Venue is proper in Nueces County, Texas. Specifically, venue is allowed in this county

CLERK OF COUNTY &
DISTRICT COURTS
NUECES COUNTY, TEXAS
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FEDERATY PEREZ

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because all or a substantial part of the events or omissions occurred in this county. Tex. Civ. Prac. & Rem. Code § 15.002(a)(1).

III.

FACTS

Defendant is the former Chief Financial Officer of the Plaintiff Corporation, Biogreen International, Inc..

In his capacity of Chief Financial Officer, Defendant had sole control of the Plaintiff Corporation's financial account and was the only person authorized to sign checks for the corporation and/or to make any withdrawals or transfers from the Plaintiff Corporation's accounts. All actions by Defendant were subject to the authorization and approval of the Board of Directors.

While serving as Chief Financial Officer of Plaintiff Corporation, Defendant knowingly and intentionally withdrew, transferred, and/or misapplied funds in excess of \$150,000 for his own personal benefit or to persons and/or family members of his choice. Additionally, Defendant purchased property in his own name and for his own benefit without the authorization and approval of the Board of Directors of Plaintiff Corporation.

IV.

BIOGREEN INTERNATIONAL, INC'S

CLAIM FOR BREACH OF FIDUCIARY DUTY

Since Defendant was an officer of Biogreen International, Inc., a fiduciary relationship existed between Plaintiff and Defendant.

Defendant, as an officer of the corporation, had a fiduciary duty to protect and manage the funds of the corporation. Plaintiff demanded return of its funds and Defendant failed to return the funds withdrawn.

By withdrawing funds without authority and taking funds for his own benefit, Defendant breached hi fiduciary duty to Plaintiff.

As a result of Defendant's breach of fiduciary duty, Plaintiff Corporation has been damaged by loss of its corporate funds in excess of \$150,000. Further, Defendant has unjustly benefitted from his wrongful action.

As Defendant's actions were intentional, Plaintiff is entitled to recovery exemplary damages.

V.

BIOGREEN INTERNATIONAL INC.'S CLAIM FOR CONVERSION

Plaintiff Corporation is and was the owner of the funds in question. It possessed the funds and still maintains an immediate right to possession of said funds.

The funds withdrawn were the personal property of Plaintiff.

Defendant wrongfully exercised dominion and control of the funds by withdrawing and/or transferring the funds to his control or benefit and/or by his purchasing property for his own personal benefit.

As a result of Defendant's actions, Plaintiff Corporation has suffered injury in the form of loss of its funds.

VI.

DAMAGES FOR PLAINTIFF, BIOGREEN INTERNATIONAL, INC.

As a direct and proximate result of the occurrence(s) made the basis of this lawsuit, Plaintiff, Biogreen International, Inc., was caused to suffer loss of its funds on deposit in its bank accounts, and to incur the following damages:

- A. \$150,000 or more in misappropriated funds

B. Exemplary Damages of at least twice Plaintiff's actual damages

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff Biogreen International, Inc. respectfully prays that the Defendant be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiff against Defendant for damages in an amount within the jurisdictional limits of the Court; exemplary damages; together with pre-judgment interest at the maximum rate allowed by law; post-judgment interest at the legal rate, costs of court; and such other and further relief to which the Plaintiff may be entitled at both law and/or in equity.

Respectfully submitted,

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By: 

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